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11 Attorneys for Juicero Inc.

12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14 SAN JOSE DIVISION

15 JUICERO INC., a Delaware corporation,

16 Plaintiff,

17 vs.

18 iTASTE CO., LTD., a/k/a iTaste Co., Ltd.
Shanghai, China and Shanghai iTaste
19 Electronics Technology Co., Ltd., d/b/a Juisir;
FROOTHIE USA LLC, a Delaware limited
20 liability company; and
21 XIUXING "LEO" CHEN, an individual,

22 Defendants.

CASE NO. 5:17-cv-01921-BLF

**JUICERO INC.'S ANSWER TO
FROOTHIE USA'S AMENDED
COUNTERCLAIMS**

JURY TRIAL DEMANDED

1 Plaintiff Juicero, Inc. (“Juicero”), by and through its attorneys, hereby answers the
2 Amended Counterclaims (“Counterclaims”) of Defendant and Counterclaimant Froothie USA
3 LLC (“Froothie” or “Defendant”).

4
5 **THE NATURE OF THE ACTION¹**

- 6 1. Juicero denies the allegations contained in Paragraph 1 of the Counterclaims.
7 2. Juicero denies the allegations contained in Paragraph 2 of the Counterclaims.

8 **THE PARTIES**

9 3. Juicero admits that Froothie purports to be a Delaware limited liability company,
10 whose agent for service of process is located at 1679 S. Dupont Hwy, Suite 100, Dover, Delaware
11 19901-5164, United States.

- 12 4. Juicero admits the allegations of Paragraph 4 of the Counterclaims.

13 **JURISDICTION AND VENUE**

14 5. Juicero admits that Froothie USA purports to state a cause of action for declaratory
15 judgement arising under United States laws, 28 U.S.C. §§ 2201-2202, and Federal Rule of Civil
16 Procedure 13. Juicero denies that Froothie has properly stated such a cause of action and denies
17 any remaining allegations of Paragraph 5 of the Counterclaims.

18 6. Juicero does not contest, for the purposes of this action, that this Court has
19 jurisdiction over these counterclaims. Juicero denies any remaining allegations of Paragraph 6 of
20 the Counterclaims.

21 7. Juicero does not contest, for the purposes of this action, that this Court has personal
22 jurisdiction over Juicero. Juicero denies any remaining allegations of Paragraph 7 of the
23 Counterclaims.

24 8. Juicero does not contest, for the purposes of this action, that venue is proper in this
25 Court. Juicero denies the remaining allegations contained in Paragraph 8 of the Counterclaims.
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28 ¹ Here and throughout, Juicero has replicated the headings used in Froothie’s Counterclaims,
but makes no admission that they are a proper part of the pleading, accurate, or true.

9. Juicero admits that Juicero alleges in its Amended Complaint that Froothie has infringed U.S. Patent No. 9,493,298 and U.S. Trademark Registration Nos. 5,018,238 and 5,124,576, which are valid and enforceable. Juicero further admits that it alleges that Froothie has infringed upon Juicero's trade dress and has engaged in unfair competition within the meaning of 15 U.S.C. § 1125(a) and California Business and Professions Code §17200 *et seq.* Juicero admits that it alleges that Froothie has engaged in common law trademark and trade dress infringement, as well as unjust enrichment. Juicero admits that an actual controversy exists between Froothie and Juicero with regard to Juicero's allegations. Juicero denies any remaining allegations of Paragraph 9 of the Counterclaims.

RELEVANT FACTS

The JUISÍR Product

10. Juicero lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 10 of the Counterclaims and therefore denies them.

11. Juicero lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 11 of the Counterclaims and therefore denies them.

12. Juicero admits that the JUISIR product is a cold-press juicing machine designed to extract juice from food matter. Juicero lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 12 of the Counterclaims and therefore denies them.

13. Juicero lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 13 of the Counterclaims and therefore denies them.

14. Juicero lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 14 of the Counterclaims and therefore denies them.

1 15. Juicero admits that the JUISIR product includes juicing bags or cartridges that are
2 designed to hold food matter and to be pressed in the JUISIR machine. Juicero lacks knowledge
3 or information sufficient to form a belief as to the truth or falsity of the allegations contained in
4 Paragraph 15 of the Counterclaims and therefore denies them.

5 16. Juicero lacks knowledge or information sufficient to form a belief as to the truth or
6 falsity of the allegations contained in Paragraph 16 of the Counterclaims and therefore denies
7 them.

8 17. Juicero admits that to use the JUISIR, the user places food matter into a cartridge,
9 that the user then places the cartridge into a pressing region, and that the machine presses the
10 cartridge, extracting juice from the food matter. Juicero lacks knowledge or information sufficient
11 to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 17 of
12 the Counterclaims and therefore denies them.

13 18. Juicero admits that the JUISIR machine uses a process that prevents food matter or
14 juice from touching the machine such that cleaning is not required by the user after juicing.
15 Juicero lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
16 remaining allegations contained in Paragraph 18 of the Counterclaims and therefore denies them.

17 19. Juicero admits that Froothie USA is a distributor of the JUISIR product in the
18 United States. Juicero lacks knowledge or information sufficient to form a belief as to the truth or
19 falsity of the remaining allegations contained in Paragraph 19 of the Counterclaims and therefore
20 denies them.

21 **Plaintiff's Juicero Product**

22 20. Juicero admits that it offers a cold-press juicer called the "Juicero Press." Juicero
23 denies any remaining allegations of Paragraph 20 of the Counterclaims.

24 21. Juicero denies the allegations of Paragraph 21 of the Counterclaims to the extent
25 they are different than the description of the Juicero Press found in Juicero's Amended Complaint.
26 Juicero lacks knowledge or information sufficient to form a belief as to the truth or falsity of the
27 remaining allegations contained in Paragraph 21 of the Counterclaims and therefore denies them.

28

22. Juicero denies the allegations of Paragraph 21 of the Counterclaims to the extent they are different than the description of the Juicero Press found in Juicero's Amended Complaint. Juicero lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 22 of the Counterclaims and therefore denies them.

23. Juicero admits that its Amended Complaint describes the "non-functional elements" of Juicero's trade dress. Juicero denies the remaining allegations of Paragraph 23 of the Counterclaims.

24. Juicero denies the allegations of Paragraph 24 of the Counterclaims.

25. Juicero admits that an article titled "A Note from Juicero's New CEO," is available at <https://medium.com/@Juicero/a-note-from-juiceros-new-ceo-cb23a1462b03>. Juicero also admits that the article states that "Our connected Press itself is critical to delivering a consistent, high quality and food safe product because it provides: . . . Connected data so we can manage a very tight supply chain, because our product is live, raw produce, and has a limited lifespan of about 8 days." Juicero denies that it offers any products that are "juice bags." Juicero denies the remaining allegations of Paragraph 25 of the Counterclaims.

26. Juicero denies that it offers any products that are "juice bags." Juicero further denies the remaining allegations of Paragraph 26 of the Counterclaims.

27. Juicero denies that it offers any products that are "juice bags." Juicero further denies the remaining allegations of Paragraph 27 of the Counterclaims.

28. Juicero denies the allegations of Paragraph 28 of the Counterclaims.

29. Juicero lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 29 of the Counterclaims and therefore denies them.

Dissimilarity of the Parties' Marks

30. Juicero lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 30 of the Counterclaims and therefore denies them.

1 31. Juicero lacks knowledge or information sufficient to form a belief as to the truth or
2 falsity of the allegations contained in Paragraph 31 of the Counterclaims and therefore denies
3 them.

4 32. Juicero admits that Juicero's use of the JUICERO mark in commerce has been
5 continuous since at least June 2016. Juicero denies the remaining allegations contained in
6 Paragraph 32 of the Counterclaims.

7 33. Juicero admits that it has used the JUICERO mark on its Juicero Press machine,
8 packaging, and website, as well as on social media. Juicero denies that Froothie has properly
9 described either the JUICERO mark or Juicero's logo. Juicero further denies the remaining
10 allegations contained in Paragraph 33 of the Counterclaims.

11 34. Juicero denies the allegations of Paragraph 34 of the Counterclaims.

12 35. Juicero denies the allegations of Paragraph 35 of the Counterclaims.

13 **Reaction to Juicero's Anti-Competitive Business Practices**

14 36. Juicero denies that it offers any products that are "juice bags." Juicero further
15 denies the remaining allegations of Paragraph 36 of the Counterclaims.

16 37. Juicero lacks knowledge or information sufficient to form a belief as to the truth or
17 falsity of the allegations contained in Paragraph 37 of the Counterclaims and therefore denies
18 them.

19 38. Juicero denies that it has the "plan" alleged in Paragraph 38. Juicero lacks
20 knowledge or information sufficient to form a belief as to the truth or falsity of the remaining
21 allegations contained in Paragraph 38 of the Counterclaims and therefore denies them.

22 39. Juicero lacks knowledge or information sufficient to form a belief as to the truth or
23 falsity of the allegations contained in Paragraph 39 of the Counterclaims and therefore denies
24 them.

25 40. Juicero admits that it has offered a "Happiness Guarantee" to Juicero customers.
26 Juicero also admits that an article titled "A Note from Juicero's New CEO" is available at
27 <https://medium.com/@Juicero/a-note-from-juiceros-new-ceo-cb23a1462b03>, and that the note
28 stated that "for the next 30 days, we've decided to extend our Happiness Guarantee to any Juicero

1 customer—new or old—who feels that we aren’t making it easier, more enjoyable and delicious
 2 to form a healthy habit. That means that if you send us your Press, we’ll refund the money you
 3 paid for it. Period.” Juicero denies the remaining allegations contained in Paragraph 40 of the
 4 Counterclaims.

5 41. Juicero denies the allegations of Paragraph 41 of the Counterclaims.

6 42. Juicero denies the allegations of Paragraph 42 of the Counterclaims.

7 **FIRST COUNTERCLAIM**

8 **(Declaration of Noninfringement of Trade Dress)**

9 43. Juicero repeats, re-alleges, and incorporates by reference its responses to
 10 paragraphs 1-42 as though fully set forth herein.

11 44. Juicero admits that as of the time of this filing it has not registered the Juicero
 12 Trade Dress as described in the Amended Complaint. Juicero denies any remaining allegations
 13 contained in Paragraph 44 of the Counterclaims.

14 45. Juicero denies the allegations of Paragraph 45 of the Counterclaims.

15 46. Juicero denies the allegations of Paragraph 46 of the Counterclaims.

16 47. Juicero denies the allegations of Paragraph 47 of the Counterclaims.

17 48. Juicero denies the allegations of Paragraph 48 of the Counterclaims.

18 49. Juicero denies the allegations of Paragraph 49 of the Counterclaims.

19 50. Juicero denies the allegations of Paragraph 50 of the Counterclaims.

20 51. Juicero denies the allegations of Paragraph 51 of the Counterclaims.

21 52. Juicero denies the allegations of Paragraph 52 of the Counterclaims.

22 53. Juicero denies the allegations of Paragraph 53 of the Counterclaims.

23 54. Juicero denies the allegations of Paragraph 54 of the Counterclaims.

24 55. Juicero denies the allegations of Paragraph 55 of the Counterclaims.

25 56. Juicero denies the allegations of Paragraph 56 of the Counterclaims.

SECOND COUNTERCLAIM

(Declaration of No Unfair Business Practices/False Designation of Origin)

57. Juicero repeats, re-alleges, and incorporates by reference its responses to paragraphs 1-56 as though fully set forth herein.

58. Juicero admits that it has alleged that Froothie's actions constitute unfair business practices and false designation of origin in violation of 15 U.S.C. § 1125(a).

59. Juicero denies the allegations of Paragraph 59 of the Counterclaims.

60. Juicero denies the allegations of Paragraph 60 of the Counterclaims.

61. Juicero denies the allegations of Paragraph 61 of the Counterclaims.

62. Juicero denies the allegations of Paragraph 62 of the Counterclaims.

63. Juicero denies the allegations of Paragraph 63 of the Counterclaims.

THIRD COUNTERCLAIM

(Declaration of Noninfringement of Trademarks)

64. Juicero repeats, re-alleges, and incorporates by reference its responses to paragraphs 1-63 as though fully set forth herein.

65. Juicero admits that it has alleged that Froothie's use of the JUISIR mark infringes Juicero's rights and constitutes trademark infringement. Juicero denies the remaining allegations contained within Paragraph 65 of the Counterclaims.

66. Juicero denies the allegations of Paragraph 66 of the Counterclaims.

67. Juicero denies the allegations of Paragraph 67 of the Counterclaims.

68. Juicero denies the allegations of Paragraph 68 of the Counterclaims.

69. Juicero denies the allegations of Paragraph 69 of the Counterclaims.

70. Juicero denies the allegations of Paragraph 70 of the Counterclaims.

71. Juicero denies the allegations of Paragraph 71 of the Counterclaims.

72. Juicero denies the allegations of Paragraph 72 of the Counterclaims.

FOURTH COUNTERCLAIM

(Declaration of No Unfair Competition Under Cal. Bus. Prof. Code § 17200, et seq.)

73. Juicero repeats, re-alleges, and incorporates by reference its responses to paragraphs 1-72 as though fully set forth herein.

74. Juicero denies the allegations of Paragraph 74 of the Counterclaims.

75. Juicero denies the allegations of Paragraph 75 of the Counterclaims.

FIFTH COUNTERCLAIM

(Declaration of No Unjust Enrichment)

76. Juicero repeats, re-alleges, and incorporates by reference its responses to paragraphs 1-75 as though fully set forth herein.

77. Juicero denies the allegations of Paragraph 77 of the Counterclaims.

78. Juicero denies the allegations of Paragraph 78 of the Counterclaims.

79. Juicero denies the allegations of Paragraph 79 of the Counterclaims.

DEMAND FOR JURY TRIAL

Under Fed. R. Civ. P. 38(b), Juicero demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

To the extent that this section may be deemed to allege any facts or any factual or legal entitlements to the relief requested, Juicero denies each and every such allegation.

a) Juicero denies that Counterclaim-Plaintiff Froothie is entitled to the relief requested in Paragraph (a).

b) Juicero denies that Counterclaim-Plaintiff Froothie is entitled to the relief requested in Paragraph (b).

c) Juicero denies that Counterclaim-Plaintiff Froothie is entitled to the relief requested in Paragraph (c).

d) Juicero denies that Counterclaim-Plaintiff Froothie is entitled to the relief requested in Paragraph (d).

e) Juicero denies that Counterclaim-Plaintiff Froothie is entitled to the relief requested in Paragraph (e).

1 f) Juicero denies that Counterclaim-Plaintiff Froothie is entitled to the relief requested
2 in Paragraph (f).

3 g) Juicero denies that Counterclaim-Plaintiff Froothie is entitled to the relief requested
4 in Paragraph (g).

5
6 DATED: June 9, 2017

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

8
9 By /s/ Kevin P.B. Johnson

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